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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JOSE R., a Person Coming Under the  
Juvenile Court Law.

B215420  
(Los Angeles County  
Super. Ct. No. JJ16585)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Donna Groman, Judge. Reversed.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Sarah J. Farhat and Dawn S. Mortazavi, Deputy Attorneys General, for Plaintiff and Respondent.

Minor Jose R. appeals from the order of wardship entered following a finding that he committed second degree burglary in violation of Penal Code section 459. Jose contends the evidence was insufficient to support the juvenile court's finding. We agree and reverse the order.

### **BACKGROUND**

On July 31, 2008, in the early afternoon, a man came into a musical instrument and sound equipment store at the corner of Pacific Boulevard and Gage Avenue in Huntington Park and asked to see a Gabanelli accordion. The man also asked how much the accordion cost. Store employee Sam Fis removed the accordion from a display case behind the counter, handed it to the man, and told him the accordion cost \$5,000. The man "lifted" the accordion and ran out the door. Fis pursued. The man ran toward Gage Avenue. A Cadillac Escalade approaching on Gage slowed, and the accordion thief "jumped" inside it. The Cadillac sped away. Fis wrote down its license plate.

Detective Elsa Cobian interviewed Jose on September 2, 2008. Jose was 17 years old on the date of the crime. Cobian told Jose that the police had arrested his friend Elias for the theft of the Gabanelli accordion. Jose was aware of the arrest and said he was "an accessory" but was not involved in the accordion theft. Jose told Cobian he had asked Elias for a ride to a store to purchase some shirts. Elias picked up Jose and a friend named Edgar. Elias appeared to be intoxicated, so Jose drove. Jose told Cobian he dropped Elias off at the AT&T store located on Pacific and Saturn to pay a bill. Jose then drove Edgar to the music store because Edgar wanted to see a Gabanelli accordion. Jose had heard Edgar and Elias talking about an accordion during the drive, but Jose could not make out what they said. Jose told Cobian he had also had a discussion with Elias about the accordion. Cobian testified, "[Jose] indicated Elias was going to help him get an accordion out, I guess on credit. He was going to help him establish credit and pay him back later." Yet Cobian also testified that Jose said Elias offered him money as a down payment for the accordion, Jose was going to help Elias get the accordion, Jose was "going to establish the credit by getting the accordion," and Elias would pay him later.

Jose told Cobian that the next thing he knew, he saw Edgar running toward the Escalade carrying an accordion. (Cobian may have misspoken, as the prosecutor later identified Jose's alleged accomplice as Elias Canela, the purported credit arrangement involved Elias, and Cobian said Elias had been arrested for the crime.) Edgar got into the front passenger door of the Escalade. Edgar "yelled at [Jose] to go." Jose did not know what to do, so he left the area. Jose later left the Escalade in South Gate with the keys in the ignition. Jose told Cobian that he felt deceived by Edgar and Elias because they misled led him into believing that "he was going to take the accordion under credit."

The juvenile court sustained a Welfare and Institutions Code section 602 petition alleging second degree burglary, stating, "[E]ven if [Jose] did not know that his friend was going into is [*sic*] the store to steal the accordion, it seems clear from the evidence that he would had [*sic*] figured that out by the time his friend came running out of the store with the accordion that he had no money to purchase. And runs into the car as the store clerk is running after him. [¶] So, that would be the theory that the court would sustain the petition under. And it's clear that the friend knew what he was going to do. He went in there, went directly to the counter, asked to see the specific accordion. So it's clear that he had the specific intent to commit a burglary as he entered the building." The court declared Jose to be a ward of the court, found the offense to be a felony, and ordered Jose placed home on probation.

## **DISCUSSION**

Jose contends that the evidence was insufficient to show that he aided and abetted the burglary. In particular, he argues there was no evidence he possessed the requisite knowledge and intent.

To resolve this issue, we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the juvenile court's finding, so that a reasonable fact finder could find the allegation true beyond a reasonable doubt. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088–1089.) We also presume in support of the juvenile court's finding the existence of every fact the trier could reasonably deduce

from the evidence and make all reasonable inferences that support the finding. (*Id.* at p. 1089.)

A person aids and abets the commission of a crime when he or she, with knowledge of the unlawful purpose of the perpetrator, and with the intent or purpose of committing, facilitating or encouraging commission of the crime, by act or advice, aids, promotes, encourages or instigates the commission of the crime. (*People v. Prettyman* (1996) 14 Cal.4th 248, 259; *People v. Beeman* (1984) 35 Cal.3d 547, 561.) Probative factors relative to aiding and abetting include presence at the scene of the crime and companionship and conduct before and after the offense, including flight. (*People v. Mitchell* (1986) 183 Cal.App.3d 325, 330.)

Burglary involves the act of unlawful entry accompanied by the specific intent to commit grand or petit larceny or any felony. (Pen. Code, § 459; *People v. Montoya* (1994) 7 Cal.4th 1027, 1041 (*Montoya*).) To aid and abet a burglary, the aider and abettor must learn of the perpetrator's unlawful purpose and form the intent to facilitate or encourage commission of the offense before the perpetrator's final exit from the burglarized structure. (*Montoya*, at p. 1046.)

We cannot infer from the juvenile court's statements that it found that Jose had the requisite knowledge and intent before he saw the perpetrator (whether Edgar or Elias) exit the store carrying the accordion. Rather, the court's statement that Jose would have somehow deduced his friend's intent to steal the accordion "by the time his friend came running out of the store with the accordion" indicates that the court concluded that Jose realized his friend stole the accordion after he saw the friend exit the store carrying the accordion. If so, the court applied the wrong legal standard. Were Jose charged with aiding and abetting a robbery, he could acquire the requisite knowledge and intent when he saw the thief running out of the store with the loot. (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164–1165.) But the accordion was not taken by force or fear, and Jose was charged with a burglary, not a robbery. The knowledge and intent required to aid and abet a burglary must be acquired *before* the perpetrator's final exit from the structure,

not when he is observed after exiting the structure carrying stolen property. (*Montoya, supra*, 7 Cal.4th at p. 1045, fn. 9.) Alternatively, if the juvenile court meant that Jose somehow figured out what the accordion thief intended while the thief was still inside the music store, the court's finding is based entirely on speculation. Although knowledge acquired and intent formed while a burglary is in progress will suffice for aiding and abetting liability (*id.* at p. 1045), nothing in the record supports an inference that Jose acquired new information or reached a new realization about his friend's plan after he dropped the friend off at the music store. Cobian's confusing, pronoun-laden testimony showed only that Jose thought his friend was going to purchase the accordion or help Jose purchase it. Although Jose's well-timed arrival at the scene as his friend ran toward the car may have been suspicious, suspicion is insufficient to support a conviction or juvenile adjudication. (*People v. Thompson* (1980) 27 Cal.3d 303, 324.) Accordingly, we conclude the record is insufficient to support the juvenile court's burglary finding.

#### **DISPOSITION**

The order under review is reversed.

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MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.